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On the Concept of Corporate Moral Agency

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1985

ON THE CONCEPT OF CORPORATE MORAL AGENCY

A Thesis

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Master of Arts

by

David Burris Ray

December 1985

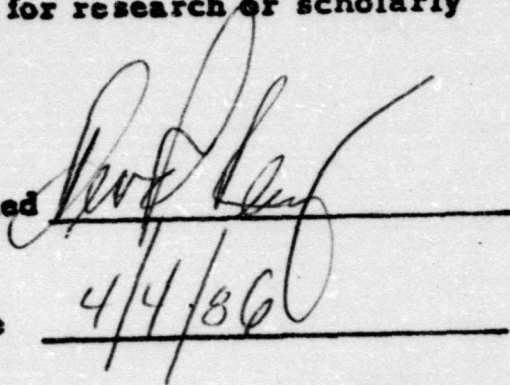
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ON THE CONCEPT OF MORAL AGENCY

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ON THE CONCEPT OF CORPORATE MORAL AGENCY

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Much of the popular discussion of the social responsibilities of corporations overlooks the fundamental question of whether corporations (as opposed to their employees) are the type of entities to which it is proper to make responsibility ascriptions. That is the question I address in this paper. I proceed by outlining the criteria a subject must meet in order to qualify as a moral agent (the most controversial of which when applied to corporations is the capability of intentional action) and then examining five popular views on the status of corporations. The views vary widely in their conclusions, from the position that corporations are full-fledged members of the moral community to the theory that it is only their employees that have moral responsibilities. Regardless of their conclusions all are found deficient for one reason or another, most criticisms boiling down to the claim that they are based on an inadequate view of corporate structure or behavior.

Following organizational theorist Michael Keeley's lead, I conclude that corporations are not moral agents, although for much different reasons than any of the other nay-sayers whose views I examine. I suggest that

whatever the details of their arguments, all theories that claim corporations are moral agents (and even some who deny it) are based on an organismic model of corporate behavior that involves goal-oriented behavior. It is my contention that when the activities of corporations are actually examined that no such corporate intentional action can be identified and that corporations therefore do not qualify as moral agents.

However, I also suggest that while we cannot properly hold corporations morally responsible for their actions, they are not shielded from moral judgements. As moral agents, we are justified in preferring one type of corporate activity over another (say, proper treatment of toxic wastes over "midnight dumping") on moral grounds. Finally, calling once again on Keeley, I point to an alternative to the organismic model of corporate behavior, the social-contract model, as a potentially more fruitful tool of inquiry into the relationships between corporations, individuals and society.

INTRODUCTION

The study of business ethics seems to have grown increasingly popular in the last several years. It has, at least, been given a good deal of attention in the popular media.

The efforts of American business to re-examine and reform itself in the face of stronger foreign competition and a shifting economy have been widely reported in the media and the subject of a great deal of popular literature and has heightened awareness of questions about not only how companies might operate more efficiently, but also about how they might be made better, healthier places to work and how the two relate.

Various minority and interest groups have pressured businesses to change their practices through boycotts, letter writing campaigns, protests, divestment and other actions. Such actions have also received a great deal of attention and served to raise broader questions about businesses social and moral obligations.

But, in most of the popular discussion (and even a great deal of the philosophical debate) concerning business and morality, much is taken for granted.

Prior to the question of what or to whom a corporation has moral responsibilities is the question of

whether or not corporations are the sort of subjects to which we can make moral ascriptions. Can corporations themselves, as distinct from the people who make them up, properly be called moral agents, decision-making actors participating in the moral community.

That is the question I will explore in this paper. Note, the question is not whether we do, in fact, place moral blame or praise on corporations. Rather, the question is whether we ought to, in the sense of having sound philosophical reasons to.

We do not place moral blame or praise on inanimate objects, animals, small children or severely mentally retarded persons because they are not able to act or think in the ways we believe necessary for subjects to be held morally responsible for their behavior. If corporations also are not capable of thinking or acting in these ways, then they cannot properly be called moral agents, and it would seem, should not be held morally responsible for their actions.

I shall spend the first part of this paper trying to elucidate the ways in which we expect a moral agent to be able to act or think and the rest of the paper discussing five popular and widely published philosophical positions on whether corporations meet these requirements.

CORPORATIONS AND MORAL AGENCY

As I noted earlier, several unanswered (in fact, unasked) questions underlay the popular debate on corporate responsibility. The question most critical to the whole exercise, at least the logically prior one, concerns whether corporations are moral agents.

Are they the type of entities to which it makes sense to ascribe moral predicates, such as praise or blame? Are they capable of the level of behavior and thought that we expect of those we hold morally responsible?

Philosophers often note the strong *prima facie* evidence for answering yes. For instance, Peter French has noted, our legal tradition considers corporations persons, with many of the same rights and responsibilities as human beings hold under the law.¹

Again, in everyday discourse we certainly talk about corporations as if they were moral agents. We blame them for certain actions, try to shame them into changing their ways, and even occasionally praise them for doing something morally upright.

And as Christopher Meyers has noted, we treat corporations as if they were full-fledged members of the

¹Peter A. French, "The Corporation As A Moral Person," American Philosophical Quarterly, XVI (1979), 153.

moral community, deserving of the same consideration we show other people.

But, although not often noted, there is prima facie evidence to the contrary as well.

Corporations are, indeed, considered persons under the law. Yet, a popular interpretation of the juristic notion of corporate personhood is that it is a legal fiction, a construct useful in the law, but having no relation to a corporation's metaphysical status.

We do commonly ascribe praise or guilt to corporations, but we also simultaneously want to ascribe blame or guilt to members of the corporation. This is obviously different from the way we speak of human agents. We don't praise a woman for pulling a drowning child from a river and also praise her hands.

In general, we simply treat corporations differently than we do people. Our consciences don't bother us as much if we take home items from work that belong to the company as we would if we took something that belonged to one of our co-workers.

In fact, evidence shows that as a society we do not hold many of the same attitudes we once did toward corporations. It is a common complaint, for instance, that younger workers do not display the same loyalty to their employers as older workers did in the past. Why is

this? Has the moral status of corporations changed in the last 25 years?

So it seems we have prima facie evidence that corporations are moral agents and that they are not, or at least are moral creatures of a different sort than human beings. How do we decide which of our practices and intuitions to follow?

To answer this question we must dig deeper than "common" sense. And the first step in this effort will be to outline what it is we mean by moral agency. What are the criteria that must be met to be considered a member of the moral community?

I should, perhaps, clear up a matter of terminology before we proceed. As we shall see there is substantial disagreement over the meaning of the terms "moral agency," "moral personhood," and "metaphysical personhood." This disagreement results in a good deal of confusion. The terms are often used without definition, making it difficult to compare what any two given writers have to say about any one of the concepts. Still more confusion is created when a writer misinterprets the way in which another philosopher has used one of the terms.

I shall try to avoid creating more confusion by being as clear as possible about what I mean when I use the terms "moral agent" or "moral person," and where possible clear up some of the confusion that already exists.

What we are after here is what is at minimum required of a subject if we are to be able to hold it morally

responsible for its actions. Whether that condition, being an entity to which it is proper to make responsibility ascriptions, is termed "moral agency" or "moral personhood" seems to me to be largely a matter of convention. Nonetheless, there are historical precedents. We cannot, of course, willy-nilly depart from accepted usage. However, as I have already noted, historic usage does not serve as much of a guide in this case.

For my purposes, I shall use the term "moral agent" to refer to the condition of being an entity about which it is proper, or makes sense, to ascribe moral predicates such as "good" or "bad," "praiseworthy" or "blameworthy."²

Exactly what is required to qualify as a moral agent remains to be seen. A start may be made by more closely examining why in our daily lives we count some entities as moral agents and some not.

As said earlier, the judgment seems to be based on some assumed criteria concerning how a subject that qualifies as a moral agent should be able to think or act. Why is it that severely mentally retarded persons and higher order animals such as dogs and cats, gorillas and dolphins are not (at least not by most people)

²The choice of this terminology is not meant to imply any views about the relation of moral agency to moral personhood or of either, or both, to metaphysical personhood.

thought of as what I've called moral agents? What happens, what changes in a human child when it passes "the age of accountability?"

There appears to be some elusive capability(ies) that separates animals from moral persons. But what is it?

One clue might be gained by taking a look at a few valid excuses for those acknowledged as moral agents. Perhaps the most often heard excuse (and hardest to verify) is (A) "That (the result in question) isn't what I intended." If challenged on the grounds that the moral agent should have foreseen that the consequences of the action taken would have resulted in the event in question (or at least, not in the intended events), A is usually accompanied by (B) "There is no way I could have foreseen this consequence" or "There were circumstances beyond my control that made it impossible for me to have foreseen this consequence;" or (C) "From everything I knew at the time, this did not seem like the probable result of my actions."

Working back from these commonly accepted excuses, we can begin to sketch out the criteria commonly (although tacitly) used for deciding moral agency.

Judging from A, intentions apparently play a significant part in our decisions concerning moral agency. So large a part that events caused by an agent but not intended (and not able to be avoided) are not acts for which we hold a person morally responsible.

We may, therefore, say that if a subject cannot act intentionally, in some way exercise its will, then it cannot be held morally responsible for the events it causes. It does not qualify as a moral agent.

At the core of the concept of moral agency we operate out of in our daily lives is the capability of acting intentionally.

Is our task complete?

Not yet. What we originally set out to do was to define the criteria that separate those we consider morally responsible from those we do not. As Christopher Meyers points out in his article "The Corporation, Its Members and Moral Accountability,"³ intentionality as simply formulated will not do the trick. As now defined, higher non-moral animals for instance, are not eliminated from the group of moral agents.

What distinguishes intentional moral action from the sort of intentional actions we attribute to those entities (like dogs or gorillas) that we would nonetheless not identify as moral agents is a mental state that Meyers terms "second order intentionality."

Borrowing from Daniel Dennett, Meyers characterizes second order intentionality, or "reciprocity" (Dennett's term), as the capacity not only to have intentions

³Christopher Meyers, "The Corporation, Its Members, and Moral Accountability," Business & Professional Ethics Journal, III (Fall 1983), 36.

desires and beliefs, but also the ability to have intentions, desires and beliefs about some other entities (or one's own) intentions, desires and beliefs. It is the capacity to participate in the reciprocity that is part and parcel of moral relationships.

This kind of intentionality is important in morality because in order to hold an individual accountable, we must be able to say s/he (or it) must first, have been capable of taking other moral agents' concerns into account. It is precisely when such concerns are either not considered and should have been, or when such concerns are considered with malevolence, that we say the agent was morally suspect. If an entity is incapable of considering another's concerns, if it does not possess second order intentionality, it is morally illegitimate to nonetheless hold it accountable for how its actions affect another's concerns. And second, after fulfilling the first condition, the entity must be able to reflect back on its intention⁴ and determine whether to go ahead with the action."

Meyers would also add as a second necessary condition of moral agency, that an entity must exist in moral relationships with others. This, however, seems to me to be implicit in the notion of second order intentionality or perhaps more exactly in the exercise of it.

Second order intentionality entails considering my intentions, desires and beliefs as well as those of other moral agents before acting. Since this type of reciprocal action is required of all members of the moral community, then in satisfying the first criterion (having

⁴Ibid., 37.

Meyers also contends that as a necessary result of his two criteria, an agent must be an "individual, a single entity to whom moral ascriptions can be assigned."⁶ There must be someone or something to whom we assign praise or guilt.

We may in some instances speak of holding a group of people responsible for some event, but what we are really saying is that each and every member of the group is responsible. Moral responsibility is the sort of thing that is unique to individuals.

Still other philosophers would add additional conditions, or modify those we have outlined for application to corporations. But they all, it will be shown, are either wrongheaded notions or contained in the conditions we have outlined.

The necessary and sufficient conditions then for moral agency, the criteria that must be met in order to be able to properly ascribe praise or blame to an entity are

1. second order intentionality and
2. individuality

Now we must consider if corporations meet our criteria of moral agency. In order to do so we will examine six different schools of thought on the matter, beginning with what I shall call the reductionist point of view.

⁵Ibid., 38. ⁶Ibid., 39.

According to Milton Friedman, the most well-known proponent of the reductionist school of thought, corporations fail on the second of the two standards set out above.⁷

Corporations, says Friedman, don't act, individual employees do; and it is those individual employees who have moral responsibilities, chiefly to the corporate stockholders.

On the opposite end of the spectrum are philosophers Peter French, David Ozar and Kenneth Goodpaster, who contend that corporations, through their internal decision making structures, incorporate individual wills into a corporate will. Under this view corporations are full-fledged moral persons.⁸

⁷Milton Friedman, "The Social Responsibility of Business," in Ethical Theory and Business, ed. by Tom L. Beauchamp and Norman E. Bowie (Englewood Cliffs, N.J.: Prentice Hall, 1979), p.60; Idem., "The Social Responsibility of Business Is To Increase Its Profits," in Moral Issues In Business, ed. by Vincent Barry (Belmont, CA: Wadsworth Publishing Co., 1983), p.

⁸Peter A. French, "Corporate Moral Agency," in ed. [Ethical Theory and Business] by Tom L. Beauchamp and Norman E. Bowie (Englewood Cliffs, N.J.: Prentice-Hall, 1979); Idem, "The Corporation As A Moral Person," in Ethical Theory and Business, ed. Tom L. Beauchamp and Norman E. Bowie, (Englewood Cliffs, N.J.: Prentice-Hall, 1979); p.207

Kenneth E. Goodpaster, "The Concept of Corporate Responsibility," in Just Business, ed. by Tom Regan (New York: Random House, 1984); Idem, and John B. Matthews, Jr. "Can a Corporation Have a Conscience?," Harvard Business Review, (September-October 1984) 41-50; Goodpaster, "Morality and Formality Organizations," in Ethical Issues In Business, ed. by Thomas Donaldson and Patricia Werhane, (Englewood Cliffs, N.J.: Prentice-Hall, 1979)

According to the structural restraint or mechanistic theory, here represented by John Ladd and Patricia Werhane, corporations are indeed structured in such a way as to incorporate the actions of individual employees, but they also have limited, specific goals, and only actions that are made according to the decision making rules and directed toward the corporate goal(s) count as corporate actions.⁹ Considerations not directly related to these limited, usually financial goals, are irrelevant in making decisions. Like computers, corporations are programmed to attain a certain state of affairs and cannot "compute" moral factors.

All the views outlined above, points out Thomas Donaldson, are based on models of corporate behavior. None of them, he contends, are always accurate descriptions of the way in which each particular corporation operates. Some models will fit well in reference to some corporations and some to others, but no one model will fit every corporation at all times.¹⁰

So, says Donaldson, we must judge each corporation individually to see what model fits it best, and based on

⁹Simeon M. Kriesberg, "Decision Making Models and the Control of Corporate Crime," The Yale Law Journal, 85 (July 1976), 109-146; Patricia Hogue Werhane, "Formal Organizations, Economic Freedom and Moral Agency," Journal of Value Inquiry, XIV (Spring, 1980) 43-49.

¹⁰Thomas Donaldson, Corporations and Morality, (Englewood Cliffs, N.J.: Prentice-Hall, 1982).

that model decide if that particular corporation qualifies as a moral agent.

While Larry May also agrees that models can give us insight into how corporations operate, he suggests they can also mislead. A corporation can be said to act (in some sense of the phrase), but only indirectly through its appointed agents. Corporations are morally responsible, but only in a way roughly analogous to full-fledged moral persons.¹¹

The importance of what model of corporate behavior one bases their theory of moral agency on is highlighted by the writings of organizational theorist Michael Keeley. All of the theories presented above (with the exception of Friedman, and we will deal with him separately) are flawed, says Keeley, in that they are based on one or another organismic or goal-oriented model. He cites many criticisms of goal oriented models, the most telling of which is that it is impossible to distinguish so called corporate goals, from the goals participants in the corporation have for it. With no distinct corporate goals, there is no corporate will and hence no intentional action or moral agency.¹²

¹¹Larry May, "Vicarious Agency and Corporate Responsibility," Philosophical Studies, IVXIII (Spring 1983), 69-82.

¹²Michael Keeley, "Organizations as Non-Persons," Journal of Value Inquiry, XV (Spring, 1981) 149-155.

Complex, formal organizations like corporations are better understood through a social contract model, suggests Keeley. While this model does not allow for corporate moral agency, Keeley contends that that does not mean we cannot pass moral judgments on the results of corporate activities.

THE REDUCTIONIST VIEW

Are corporations the sorts of entities to which it is proper to ascribe blame or praise? Do corporations meet our criteria for moral agency?

The reductionist answer to both questions, as found in the writings of Robert Holmes and Milton Friedman, is a definite no. Their argument is simple. Corporations can't have moral responsibilities because corporations aren't persons, and only persons, "living, rational beings,"¹³ can have moral responsibilities or be the proper objects of moral praise or blame.

I have termed this view "reductionist," because, according to Holmes and Friedman, corporate actions, decisions, intentions and moral responsibility are reducible to the actions, decisions, intentions and moral responsibilities of the individual persons that make it up.

Thus there is no advantage, writes Holmes, to hypostatizing corporations, they have life only through the choices and decisions of individual persons. We nevertheless do speak of corporations as though they were persons, and there is no harm in this so long as it is understood that such talk must be transposable into statements about the conduct of individuals -- not necessarily without remainder, but with sufficient completeness to enable us to

¹³May, "Vicarious Agency," p.153.

formulate the appropriate moral judgements about the latter.¹⁴

The argument seems powerful in its simplicity. It moves forcefully to its conclusion, not burdened by the baggage of arguments in support of its premises.

Holmes and Friedman seem to think it self-evident that "corporations aren't persons" and that "only persons can have moral responsibilities." But as the mere presence of plausible arguments to the contrary show, that is not the case.

With no arguments in support of their case, we are forced to try to piece together their reasons for holding these positions from the hints they have given us in their writings.

The basis for Friedman's and Holmes' position that corporations are not persons is based on the commonly held "legal fiction" interpretation of the legal status of corporations as persons.¹⁵ This interpretation holds that legal persons are the creation of the law. As Peter French writes: "The theory does not view the law as recognizing or verifying some pre-legally existing

¹⁴ Ibid.

¹⁵ Friedman, "The Social Responsibility of Business is to Increase Its Profits," 62.

persons; it argues that the law creates its own subjects."¹⁶

But as French and others have pointed out the legal status of an entity has little to tell us about its moral status (except perhaps as *prima facie* evidence). For under the law, a juristic person need not necessarily be an agent. In the law, being a holder of rights is contrasted with being an administrator of rights; as for instance, in the case of human beings who have died or are yet unborn, both of which have in different instances been granted rights under the law, but neither of which can exercise them. If they are to continue to hold this position it must be on other grounds than on appeal to legal theory. To do this, one would need to delineate the criteria for personhood, and then clarify the concept and show that corporations do not meet those criteria.

Of course, what they may be claiming by stating that corporations aren't persons is that they are not human beings, the implication being that being a human being is a necessary condition for moral agency. Again, this does not seem self-evident.

When we use the term moral agent we are most often referring to a human being. But to preclude any other entity from moral agency, simply because it is not a human being, is to be guilty of what French has called the "anthropocentric bias."

¹⁶French, "The Corporation As A Moral Person," p. 212.

One would like to give Holmes, a professional philosopher, the benefit of the doubt on this point. But, he makes it difficult. First, he doesn't seek to distance himself from what one would think is a possible misinterpretation of the statement. Secondly, in his own statement on this point, he uses the term "living, rational beings" for "persons," which seems to be a veiled way of saying human beings.

Even if it is not, the claim that corporations are not "living, rational beings," seems no more self-evident than the claim that corporations aren't persons. The burden of proof for this assumption lies with Holmes, as well as some explanation for why being a living, rational being has anything to do with whether an entity is a moral agent.

More directly related to the question of whether corporations meet our criteria for moral agency is the claim that corporate actions, decision and intentions are reducible to those of the people "who stand in the appropriate relations to them [corporations] (e.g., as directors, managers, stockholders)."¹⁷

If all so-called corporate actions are actually more accurately described as the actions of a corporation's members, then there are no corporate intentions; and if there are no corporate intentions, then corporations are

¹⁷May, "Vicarious Agency," p. 153.

not moral agents. Again, no support is given for the claim that corporate actions are reducible to the actions of its members.

Holmes does present one pragmatic argument. He suggests that nothing is gained by attributing actions or decisions to corporations since there are no moral obligations that "wouldn't bear equally" on corporate members and the corporation alike.

Holmes would seem to be saying that even if corporations could be said to have moral responsibilities that the obligation for living up to them would fall upon the employees or board or stockholders since corporations can only be said to act "through the choices and decisions of individual persons."¹⁸

But what Holmes (and Friedman) fail to appreciate is the difference between acting as an agent for someone or something else, and acting for one's self. Corporate structure sets up official relationships whereby the acts and decisions of individuals or groups of individuals in certain authorized positions (not necessarily, or exclusively executives) count as the acts and decisions of the corporation.

It has become almost a cliché to say that the sum is more than the whole of the parts, but when originally penned it was much more than a glib remark. It was an

¹⁸ Ibid.

observation based on the study of organizations. And the observation still holds true, individuals acting in concert can do more than the same individuals acting separately.

This is no less true for corporations than for any other organization. To use French's well known hypothetical example, there is something deficient in describing Gulf Oil Co.'s decision to join a uranium cartel (a decision made by a committee of three executives) as corporate executive X, corporate executive Y and corporate executive Z each deciding Gulf Oil Company should join the cartel.

Holmes, in fact, recognizes this when, as noted earlier, he writes that it is fine to talk about corporations acting or deciding as long as we understand

that such talk must be transposable into statements about the conduct of individuals -- not necessarily without remainder, but with sufficient completeness to enable us to formulate the appropriate moral judgements about the latter.¹⁹

The key phrase is "not necessarily without remainder." This is not a matter to be measured. Either the decisions or actions of individuals or groups of individuals in the appropriate relationships to a corporation are more than simply the aggregate of the decisions of the individuals themselves or they are not. And if they are in some sense "more," whatever

¹⁹ Ibid.

exactly that may mean, then Holmes and Friedman are wrong, and so-called corporate actions or decisions are not reducible to the actions or decisions of those who make up the corporation.

Does this mean, contrary to Friedman's and Holmes' basic contention, that corporations do qualify as moral agents. Not necessarily. Whatever the "more" we have discussed is, we certainly haven't established that it is in any sense a corporate intention or will. What we have shown thus far is that the reductionist view is an untenable position (at least, that Holmes nor Friedman have advanced compelling arguments for it). We next turn to a position almost 180 degrees from the reductionist view, the moral person view, as advanced by Peter French, David Ozar and Kenneth Goodpaster.

THE MORAL PERSON VIEW

Peter French

The moral person view has received its classic statement in Peter French's article, "The Corporation as a Moral Person,"²⁰ but has also appeared in several variations in the writings of other philosophers, including Kenneth Goodpaster and David Ozar.²¹

Briefly stated, the moral person theory holds that corporations are full-fledged members of the moral community, in French's terms, moral persons, with all the attendant rights and responsibilities.

Corporations, moral person theorists maintain, achieve a certain identity or individuality through their decision making structures, frameworks that mold the decisions, actions and intentions of individuals into a single corporate decision, action or intention.

To properly examine this position it will be necessary to examine the writings of each of the proponents we have mentioned individually. We will begin

²⁰French has advanced his position in several other articles as well. See the bibliography for a partial listing.

²¹It should be noted that the category "Moral Person View" is the creation of Thomas Donaldson which I have borrowed. While French would most likely not have a problem with being placed in this category, Goodpaster and Donaldson might.

with the champion and originator of the position, Peter French.

As a first step in understanding French's argument, it will be helpful to be familiar with the way in which he uses the term "moral person."²² French defines a moral person "as the referent of any proper name or description that can be a non-eliminatable subject of what I shall call...a responsibility ascription of the second type."²³ Responsibility ascriptions of the second type focus on intentions, pointing up the distinction between simply being the cause of an event and in some sense being the agent of it.

French quotes J. L. Austin on this point: "In considering responsibility, few things are more important than to establish whether a man intended to do A or whether he did A intentionally."²⁴ The minimum required of a subject in order for it to be capable of

²²It should be noted that French claims certain metaphysical attributes for moral persons that I have not claimed for moral agents. However, the arguments French offers and that we shall examine for considering corporations as moral persons deal primarily with the criteria we have suggested for moral agents, rather than the metaphysical properties he associates with moral personhood. Therefore, I will give little attention to his claim that corporations possess certain metaphysical attributes associated with persons.

²³French, "The Corporation As A Moral Person," p. 210.

²⁴French, "Corporate Moral Agency," p. 185.

this type of action, is what French calls non-eliminatable Davidsonian agency, and this is where our criteria for being a member of the moral community diverge.

The primary attribute of a Davidsonian agent, as far as I can tell for French does not define it, is a simple kind of intentionality of the sort we attribute to higher, non-moral animals. French writes that "...the possibility of describing something as an agent depends upon whether or not it can be properly described as having done something for a reason."²⁵ And as we have already seen, this is not a complete enough exploration of the kind of intentionality involved in moral agency.

"...for a corporation to be treated as a Davidsonian agent it must be the case that some things happen, some events, are describable in a way that makes certain sentences true, sentences that say that some of the things a corporation does were intended by the corporation itself..." as distinct from the intentions of "the biological persons who comprise [it], e.g., its board of directors."²⁶

The device French proposes to allow such a description is what he calls a Corporation's Internal Decision or CID structure. The CID structure is meant to illuminate the ways in which corporations have intentions and make decisions.

²⁵ Ibid.

²⁶ French, "The Corporation As A Moral Person," p. 211.

The two elements that help spell out how this happens in a corporation are 1) the organizational or responsibility flow chart that delineates stations and levels within the corporate power structure, and 2) corporate or internal recognition rules that allow recognition of when a decision has been made for corporate reasons.

The organizational chart makes clear the relationships that hold in a corporation. The recognition rules (which may be formal or informal) are made up of "procedural recognitors," rules about how decisions are to be reached and by whom (what positions on the organizational chart), and corporate policy or beliefs.

Corporate policies, beliefs or goals are "encrusted in the precedent of previous corporate actions and its statement of purpose as recorded in its certificate of incorporation, annual reports, etc."²⁷

If a decision is made in line with established procedure then it can be said to be a corporate decision. For example, let us say that in Gulf Oil Company's CID structure unanimous decisions made by the individuals in positions A, B and C on the organizational chart count as decisions made by the corporation. Then a unanimous decision by the individuals in those positions (regardless of their motivation for so deciding) to join

²⁷French, "Corporate Moral Agency," p. 132.

an international uranium cartel can be described as Gulf Oil Corporation deciding to join the cartel.

It is the CID structure in its procedural recognitors, says French, that allows us to see what otherwise is not seen. It "licenses the descriptive transformation of events, seen under another aspect as the acts of biological persons...to corporate acts by exposing the corporate character of those events."²⁸

The CID structure, in French's terms, synthesizes and subordinates individual wills into a corporate will; it "incorporates acts of biological persons."²⁹ This alone, however, doesn't establish corporate intentionality.³⁰ Corporate actions must also be performed in accord with corporate policies or goals in order for there to be a corporate intentional act.

"Simply, when the corporate act is consistent with, an instantiation or an implementation of corporate policy, then it is proper to describe it as having been done for corporate reasons, as having been caused by a corporate desire coupled with a corporate belief and so on, in other words, as corporate intentional."³¹

This "redescriptive device," to use French's term, reveals corporate actions, decisions and intentions where

²⁸ French, "The Corporation As A Moral Person," p. 212.

²⁹ Ibid., 222.

³⁰ Ibid, 213. ³¹ Ibid.

we had seen only individual intentions, actions and decisions. They are two, non-identical aspects of the same event. In this sense, corporations can be said to be individual entities, with attributes not reducible to those individuals who make them up.

So, it seems, corporations do meet our requirements for moral agency and can properly be considered full-fledged participants in the moral community.

But, thorough and insightful as his argument is, there are problems with French's position.

It will be recalled that French's conception of intentionality was found to be deficient because it fails to exclude the type of "intentional" actions we sometimes attribute to dogs and cats.

Under Christopher Meyers guidance, we suggested "second order intentionality" as a more appropriate criteria for moral agency. What distinguishes second order intentionality from the concept French proposed is the capacity to reflect on the effect of one's intended action on the desires and beliefs of others.

There is a serious question in my mind whether French's redescriptive device, the CIDs, can be stretched to cover this kind of reflective thought. Meyers thinks it can.

Meyers' example of a typical corporate-level decision of the second order type is of American Airlines lowering its transcontinental flight fare. "It does so," writes

Meyers, "with due consideration of how it will affect the desires or intentions of competitors, consumers, regulators, etc."³² If Eastern threatens a price war, American will calculate the cost and probably back off.

But is this really the type of thought we are talking about in second order intentionality? Is the simple, cold calculation of how one's actions will affect others all that is required of moral thinking? Or, is there something more, not only considering, but having empathy. I suggest the moral point of view involves more than calculating how my actions will eventually affect me through the reactions of others. And if this is true can we say corporations feel or empathize? How are we to recognize corporate empathy? What recognizer or corporate structure licenses a redescription of the activities of individuals in the corporation as the corporation itself thinking, feeling or empathizing. Perhaps it would make some sense to call the gathering of information and deliberation that goes into a corporate decision, the corporate thought process. But in any literal sense? Surely, now we must be speaking figuratively. If we don't take such statements literally, are we really, as French would claim, guilty of an anthropocentric bias? Or is French simply determined to interpret a model of organizational

³²Meyers, "The Corporation, Its Members, and Moral Accountability," p. 37.

behavior based on the behavior of persons, as a literal description, regardless of how far the model must be stretched?

At any rate, there are other problems with his position. According to French, decisions made in accordance with CID structure, corporate decisions, are not yet examples of corporate will. In order for a decision to be an example of corporate will, in order for it to be "proper to describe it as having been done for corporate reasons,"³³ it must not only have been made in accordance with CID structure, but also must be "consistent with an instantiation or an implementation of "established corporate policy."³⁴ In other words, corporate decisions or actions must in some sense be in accordance with established corporate policy in order for them to count as intentional acts of the corporation.

This seems to leave open the possibility of corporate actions or decisions that are not the intentions of the corporation. And if corporate policy is at least morally neutral, then it seems any immoral act or decision would not qualify as an intentional action of the corporation, thereby eliminating the possibility of immorality on the part of a corporation whose "personality" is basically moral.

³³French, "The Corporation As A Moral Person," p. 213.

³⁴Ibid.

French's formula seems to allow no room for wrongdoing by such a corporation, for deviations from the corporate character, any action that does not conform with "corporate policy" is automatically disqualified as an intentional act of the corporation.

Lest this seem like too far-fetched a criticism of French's position, consider again the types of things that French cites as representative of corporate policy, "the precedent of previous corporate actions"³⁵ and a corporation's "statements of purpose as recorded in its certificate of incorporation, annual reports, etc."³⁶ I have yet to see an official corporate statement that doesn't set high moral standards. As Michael Keeley has pointed out, most organizational theorists maintain that such official statements serve more as public relations propaganda than as guides to conduct.

Philosopher Larry May challenges French's position on other grounds. May makes a distinction between "acts of will" and "consensual or cooperative decisions."³⁷ He contends that the process of decision making French describes as the subordination and synthesis of individual wills into a corporate will, is actually

³⁵One would assume that previous corporate actions also are defined by the CIDs' qualified act + policy = intentional act equation.

³⁶French, "The Corporation As A Moral Person," p. 214.

³⁷May, "Vicarious Agency," p. 70.

nothing more than the achievement of a consensus in which, as in French's Gulf Oil example, each executive alters his or her will, but in no sense gives it up.³⁸

While French might agree that in one sense there is a consensus of wills, he would go on to claim the device he has proposed allows us to see another aspect of the same event, without denying the aspect May describes. The CID structure licenses a redescription of the same event as the corporation deciding, as a willful act of the corporation.

But there is a large leap from describing an event, speaking of an event as the corporation deciding, and the corporation literally deciding in the sense that human beings are said to decide. The former is an analogy; the latter is a description of a metaphysical condition. And, as we have seen, there are some very serious problems with the latter.

The last criticism of French's position we will consider is advanced by organizational theorist Michael Keeley. Keeley's criticism focuses on the notion of corporate goals or corporate policies, a notion crucial to French's redescription of events as corporate intentional.

Keeley points out that the types of official statements that French cites as evidence of corporate

³⁸ Ibid., 71.

goals have generally been considered by organizational theorists to be "at best misleading," calculated more to secure societal approval and the commitment of particular corporate participants than to guide corporate actions.³⁹

Also, suggests Keeley, there is a theoretical problem with distinguishing goals of a corporation (what the organization itself wants) from goals for a corporation (what the people associated with the corporation want). We will have much more to say about this later when we consider Keeley's criticism of goal-based theories of organizational behavior. For now, it will suffice to quote Keeley on the importance of the distinction:

Now, it may be possible to identify [goals for an organization] by questioning organizational participants, and it may be possible to identify [the consequences of an organization] by observing their behavior. But it is not apparent that the...goals of an organization, which are supposed in the social-person view...can be identified by any means. If, in fact, truly organizational goals or intentions defy identification, there is not much point in pretending that they exist or that organizations resemble persons in any significant way.⁴⁰

French's theory has then been found deficient in several ways:

1. It leaves as a possibility the strange circumstance that a corporation with morally upright corporate

³⁹ Keeley, "Organizations as Non-Persons," p. 151.

⁴⁰ Ibid., 150.

policies might not be able to commit a morally irresponsible act.

2. While the CID structure suggests a reasonable way in which to attribute a simple sort of intentionality to corporations, it seems inadequate to the task of showing us in what way a corporation could be said to have the empathy and reflective thought associated with second-order intentionality.
3. As Larry May points out, what French wants to call a process of synthesis and subordination of individual wills into a metaphysical corporate intentional will, is actually nothing more than the process of compromise and consent by which any group reaches a decision.
4. According to Michael Keeley, corporate goals, (what Keeley terms "goals of an organization") don't operate in the real corporate world in the way French suggests they do, and, in fact, may not exist at all.

Kenneth Goodpaster also argues that corporations are moral persons, but arrives at that conclusion by a different reasoning process than French. First, I will outline his position and then check to see if it is subject to the same objections as was French's argument.

THE MORAL PERSON VIEW

Kenneth E. Goodpaster

Goodpaster's program is much different than that of French, although their position on the moral status of corporations is much the same. In all of Goodpaster's writings with which I am familiar, he is more concerned with the framework of moral behavior and how it can be applied to corporations than in providing justification for considering corporations as moral agents.

Agency, according to Goodpaster, lies in the capability to take the moral point of view. A capability which he assumes corporations capable of when he projects the processes associated with the moral responsibility of persons to the level of organizations. "Our proposed frame of reference for thinking about implementing corporate responsibility aims at spelling out the processes associated with the moral responsibility of individuals and projecting them to the level of organizations."⁴¹

This is justified according to Goodpaster, because of an analogy that holds between organizations and persons. An analogy that he bases on the example of corporations acting as single entities, as individuals. "For," writes

⁴¹ Goodpaster and Matthews, "Can a Corporation Have a Conscience?," p. 43.

Goodpaster, "if a group can act like a person in some ways, then we can expect it to behave like a person in other ways. For one thing, we know that people organized into a group can act as a unit."⁴² The traits to be projected from persons to corporations are what Goodpaster defines as the two aspects of the moral point of view: rationality and respect.

Rationality involves a:

lack of impulsiveness, care in mapping out alternatives and consequences, clarity about goals and purposes, and attention to the details of implementation...

And respect involves:

...a special concern for the effects of one's decisions and policies on others, special in the sense that it goes beyond...seeing others merely as instrumental to accomplishing one's own purposes.⁴³

These are behaviors very similar to what I outlined as second order intentionality. In fact, Goodpaster's definitions might be said to flesh out the concept. With these kind of traits in mind, Goodpaster suggests that corporations that do such things as

monitor their employment practices and the effects of their production processes and products on the

⁴²Ibid., p. 45.

⁴³Goodpaster, "Corporate Responsibility," p. 134.

environment and human health show the same kind of rationality and respect that morally responsible individuals do. Thus, attributing actions, strategies, decisions, and moral responsibilities to corporations as entities distinguishable from those who hold offices in them poses no problem.⁴⁴

This is not a surprising conclusion. But several of Goodpaster's moves are rather suspect.

First, although Goodpaster insists his view does not involve speaking of corporations as moral persons in any literal sense, this is exactly what he does.⁴⁵

Goodpaster states very clearly that he means to use human moral agency as a model for corporate moral behavior. However, in his zeal to make his point, he steps over the bounds of the analogy to declare that corporations are moral persons and proper subjects of moral predicates.

In "Can a Corporation Have a Conscience"⁴⁶ in particular, Goodpaster claims that corporations who take actions similar to those we associate with morally responsible persons, show

the same kind of rationality and respect that morally responsible individuals do. Thus, attributing actions, strategies, decisions and moral responsibility to corporations as entities distinguishable from those who hold offices in them poses no problem.⁴⁷

⁴⁴ Ibid. Goodpaster and Mathews, "Can a Corporation Have a Conscience?," p.43.

⁴⁵ Ibid, 31. ⁴⁶ Ibid., 41-50. ⁴⁷ Ibid., 43.

There is a significant and unjustified move from the fact that certain similarities exist between the sorts of things corporations do and the sort of things moral persons do to the conclusion that corporations are moral persons.

In this one very suspect move, Goodpaster has gone from making an analogy between individuals and corporations to stating that corporations are moral agents.

It is one thing to say something is analogous to something else; it is quite another to say it is of the same kind, that is, that it is of the same species.

Moreover, although Goodpaster speaks of it as simply one example of the several ways in which corporations are like persons, the supposed capability of corporations to act as single entities plays a much more crucial role in his argument. In fact, I suggest that the very possibility of Goodpaster's overall analogy depends on it.

Certainly this is what Goodpaster is referring to when he writes: "...if a group can act like a person in some ways, then we can expect it to behave like a person in other ways."⁴⁸ Furthermore, we must be able to stretch the analogy to all the ways of thinking and acting entailed in rationality and respect.

⁴⁸ Ibid.

The centrality of the notion of intentional action to the concept of moral personhood requires that any subject which we would want to speak of as analogous to human persons must be analogous on this key point.

This sort of intentional action, Goodpaster claims, entails acting as a single entity. And this, he says, groups can do. Appealing to French, Goodpaster writes that corporations have rules and structures that tell us when actions of individuals in the corporation count as actions of the corporation itself.⁴⁹

But, as we have already seen, problems with French's account of Corporate Internal Decision structures show the view to be somewhat removed from corporate reality and far too optimistic about the sort of unity that Goodpaster suggests is the outcome of these structures.

In addition, Keeley's criticism about corporate goals (which we will examine more fully later in this paper) makes the existence of so-called corporate actions doubtful. And if corporations can't properly be said to act as individual entities, corporations cannot be said, even analogously, to take the moral point of view; and it is very difficult to make much sense out of an analogy between moral persons and corporations.

⁴⁹ Ibid.

THE MORAL PERSON VIEW

David Ozar

David Ozar's position may more appropriately be termed the moral agent view. His terminology is closer to the terminology I have proposed in this paper than to French's. However, his conclusions are very close to French's.

Very simply, Ozar argues that in order to hold any group responsible for its actions we must be able to say it can act as a single entity as opposed to the members that constitute it. There are certain circumstances under which we do speak of clubs and nations in just that way, says Ozar, and if clubs and nations, why not corporations.

This is admittedly a slight oversimplification of Ozar's argument. He does give an account of the circumstances in which we speak of clubs or nations as acting as single entities, circumstances very similar but not as detailed as French's. It is rules, informal and formal, accepted by the persons involved in a given organization (explicitly or tacitly) that define when an action qualifies as an action of a state or club as a single entity.

Corporations also have such "recognition" rules. Therefore, Ozar concludes, it is reasonable to hold corporations morally responsible for their actions in the same way as clubs or nations.⁵⁰

What is missing in Ozar's position is any account of why we should equate actions that we normally count as the action of a group as a single entity with the type of intentionality that is required of moral agency.

Ozar himself is explicit about this:

The argument offered here is that corporations fulfill the conditions we actually use to judge whether a group can be considered to be a single entity in the performance of actions. It does not attempt to answer the more difficult question of why these conditions are appropriate, i.e., why the acceptance of certain sorts of rules justifies us in attributing agency to a group as a single entity.⁵¹

Even if he were to offer an argument to support his case, the similarity of Ozar's explanation of the process through which a decision of individuals becomes the decision of a corporation to French's CIDs suggests that

⁵⁰David T. Ozar, "The Moral Responsibilities of Corporations," in Ethical Issues in Business, ed. Thomas Donaldson and Patricia Werhane (Englewood Cliffs, N.J.: Prentice-Hall, 1979), p. 298.

⁵¹*Ibid.*, p. 300.

a more fully developed position would be subject to many of the same criticisms as French.

One final criticism of the moral person view comes in the form of the next view we shall consider. According to the Structural Restraint position, Ozar and the other moral person theorists have done well to concentrate on corporate structure, but they have misunderstood its relevance to corporate moral agency.

THE STRUCTURAL RESTRAINT VIEW

John Ladd and Patricia Werhane are the two most well known proponents of what Thomas Donaldson has called the "Structural Restraint" view.

Briefly, they hold that corporations are goal-achieving machines, and just as it would be ridiculous to demand that machines behave morally, so it is foolish to call for corporations to be morally responsible.

A corporation is restrained by its structures from taking moral considerations into account in its decision-making. They are set-up to achieve a particular end or set of ends, and all that counts is how to achieve that end most efficiently.

Ladd claims that corporations are of the class of "formal organizations." Formal organizations in turn are defined as "decision making structures;" which is to say they are constructs designed to achieve certain predefined goals by appropriating the actions and decisions of their members as their own.⁵²

⁵²John Ladd, "Morality and the Ideal of Rationality in Formal Organizations," in Ethical Issues in Business, ed. by Thomas Donaldson and Patricia Werhane (Englewood Cliffs, N.J.: Prentice-Hall, 1979), p. 117.

This is achieved by rules that define when a decision or action of corporate employees counts as a decision or action of the corporation, thereby achieving a clear cut distinction between decisions employees make for the corporation and decisions they make for themselves.

Organizational or social decisions, as they are called by Ladd, are decisions "related" to organizational goals.⁵³ Any decision made by a corporate employee that doesn't further the achievement of the corporate goals counts as a personal decision.

So far, the argument sounds much like that of the moral person argument, but this is where the similarity ends.

In contrast to Ozar, Werhane points out that although there is a surface-level similarity in the way in which clubs, nations and corporations make decisions, the relationship of corporate members to the corporation is much different from that of members of a club or nation.

Clubs or nations exist, in some sense, for the good of their members, and their members count as ends in their decisions. Corporations, however, exist for the pursuit of impersonal goals, unrelated to their members

⁵³ Ibid.

(at least not as members) and their members count only as means to those impersonal ends.

Rule governed behavior, says Werhane, does not necessarily imply moral agency.⁵⁴ Actions taken by corporate members for the corporation, that is to say, corporate actions, are not what we have called second-order intentional. They are much more like intentions of the first order. They are not characterized by reflection on the effects of the action on the goals of others.

As in playing a game, corporate decisions must be made according to the rules and must, in order to be intelligible, be made to achieve the goal of the game, e.g., as in chess, to checkmate the opponents king.⁵⁵

Unlike French, Ladd is willing to accept the consequences of defining corporate intentional acts as only those that are made in accordance with corporate goals. In fact, he claims that for an organization to make a decision not related to one of its goals would be tantamount in a chess game to knocking the pieces off the chess board and claiming that as your move.⁵⁶

It would, says Ladd in an appeal to Wittgenstein, under the rules of that particular language game be

⁵⁴Werhane, "Formal Organizations," p. 44,45.

⁵⁵Ladd, "Morality and Rationality in Formal Organizations," p. 117.

⁵⁶Ibid., 106.

irrational. Additionally, a move made in the game is isolated from criticism based on criteria other than the rules and goals of the game itself. Moves made within the game are "logically autonomous."⁵⁷

In the same sense then, it would be irrational for a corporation to make any decision not directly related to the achievement of corporate ends. For Ladd and Werhane, rationality is determined by whether or not a decision is "efficient in pursuing a desired goal, whatever that might be."⁵⁸

Furthermore, what a corporation's goals happen to be, regardless of the moral value we as moral agents may place on them, have nothing to do with its moral status. For, as Werhane and Ladd have defined it, rationality is morally neutral to the corporations' goals.

"Thus," writes Werhane, "as Ladd writes in his paper, corporations are structured very much like machines. Corporate rules and procedures, like the design and structure of a machine, are set up to achieve external economic ends rather than designed in relation to, or as a consequence of member employees...Therefore, while corporate activities are governed, these rules, as impersonal operating procedures, preclude rather than imply moral agency."⁵⁹

So it seems, once we grant Ladd and Werhane that corporations are formal organizations and that formal

⁵⁷Ibid., 103. ⁵⁸Ibid., 106.

⁵⁹Werhane, "Formal Organizations," p. 45.

organizations are as they have defined them, that their argument grinds inexorably toward its conclusion. They may be capable of activity as a single entity, but not of the type of reciprocal action we have said is a necessary condition of agency. Corporations fall short of our criteria for moral agency.

But, their premises are not so obvious as Ladd and Werhane assume. The concept of a formal organization is just one model for understanding corporate behavior; and whether corporations fit this model is an empirical matter. But, this is a question we will return to.

As airtight as their argument seems, several philosophers have advanced criticisms internal to the argument.

Kenneth Goodpaster, whose own views we examined earlier, has taken Ladd's challenge to the intelligibility of the moral person view head-on in his article, "Morality and Formal Organizations."⁶⁰

Goodpaster accepts Ladd's premise that organizational rationality has a pure means-to-end component, but posits that in reality the ends are rarely unalterable. Given this, he proposes that rationality as the efficient pursuit of goals must be amended to include the scrutiny and modification of those ends. And, it is in relation

⁶⁰ Goodpaster, "Morality and Formal Organizations."

to the task of such scrutiny that Goodpaster sees the relevance of moral principles.⁶¹

However, as Thomas Donaldson has pointed out it is just the sort of activity Goodpaster suggests in his amendment to organizational rationality that Ladd has claimed corporations aren't capable of. The structural restraint argument, writes Donaldson, "claims that they [corporations] cannot be moral agents because they are analogous to goal pursuing machines, which are not machines built to evaluate and challenge their own goals."⁶²

In effect, then, what Goodpaster has done is to suggest that corporations don't function as Ladd and Werhane have claimed. Again, this is a point we will return to.

Goodpaster, along with Meyers, has also raised serious questions about an analogy central to Ladd and Werhane's position, the game analogy. Goodpaster suggests that there are some serious disanalogies between the rules of a game, in particular Ladd's example of chess, and the organizational goals Ladd claims act as the decision making premises for formal organizations.

Game rules, says Goodpaster, are relatively static, while organizational goals or premises tend to be more

⁶¹ Ibid.

⁶² Donaldson, "Corporations and Morality," p. 26.

dynamic. Organizational goals shift considerably, although possibly incrementally, over time due to pressure from various interest groups inside and outside the corporation.⁶³ For instance, as Berle and Means pointed out more than 50 years ago, as effective control of a corporation shifts from the board of directors to the senior management, the primary goal shifts from maximization of profits to organizational survival. Maximization of profits becomes just one way to keep the corporation alive.

Organizational theorist, Charles Perrow has even provided an outline of how organizational goals change as the organization matures and the power base shifts.⁶⁴

"By contrast, it would be surprising to find such changes in the rules or objectives of chess over time,"⁶⁵ writes Goodpaster. The difference is due, he claims, to the fact that unlike organizational decisions, moves in a game have very little impact on peoples lives.

"I do not mean to suggest," writes Goodpaster, "that the constitutive rules of chess do not, or have not, undergone evolution. They clearly have. What is important is that this evolution (a) has been very slow since initial formulations of the game and (b) has not been due to the impact of the game on the

⁶³Goodpaster, "Morality and Formal Organizations," p. 117.

⁶⁴Charles Perrow, "The Analysis of Goals in Complex Organization," American Sociological Review XXVI (Spring, 1961), 854-66.

⁶⁵Goodpaster, "Morality and Formal Organizations," p. 118.

players or others' lives or well-being (since there is next to no impact to speak of -- which is why chess is only a game.)⁶⁶

Christopher Meyers, and I along with him, offers another criticism of Ladd's game analogy. Based on Wittgenstein's views of language games, Ladd claims that moves made within a game are immune to challenges based on any criteria outside the game. In this sense, organizational behavior, as analogous to a move in a game is claimed to be shielded from moral considerations.

Wittgenstein, however, does not seem quite so definitive about their being hard and fast lines between language games. Words are given meaning by context in a particular language game but yet are also used "sometimes as it were between the games."⁶⁷ Language games are not strict compartmentalized areas of activity in our lives. They overlap, collide, and subsume or are subsumed. A case can be made, I think, for saying that the language game of morality is an all-pervasive game, that it in some sense provides the background for all other human activity. For instance, what is the concept of cheating in chess or any other game? Is this not a moral notion? From where within the game of chess does this notion emanate?

⁶⁶Ibid., 122.

⁶⁷Ludwig Wittgenstein, Philosophical Investigations, (New York: Macmillan Publishing Co., 1958), p. 188.

This is not the place to fully explore this idea. It is perhaps enough for our purposes to note that it is not a logical impossibility for moral notions to be intelligible in any language game.

Meyers takes an even stronger stand on the subject:

"Given Wittgenstein's (to whom Ladd appeals) discussion of the social context and its importance to the make-up of particular language games, the exclusion of moral considerations is altogether illegitimate."⁶⁸

Whatever, the internal problems with Ladd's and Werhane's positions, the really damning criticism of the structural restraint view is that corporations simply do not operate as they claim.

As I mentioned earlier, the category of formal organizations is simply a descriptive model, and the appropriateness of its application is a question open to empirical inquiry. We have already seen at least one way in which corporations differ from the model of formal organizations in our discussion of the evolution of corporate goals. In Donaldson's words, the structural restraint view oversimplifies both what corporations are and how they behave.

⁶⁸Meyers, "The Corporation, Its Members, and Moral Accountability," p. 38.

THE CONDITIONAL VIEW

In his book, Corporations and Morality, Thomas Donaldson examines two views we have looked at in this paper, the Moral Person view and the Structural Restraint view.

In his critique of the Structural Restraint view, he states that the model oversimplifies corporate behavior. As evidence he suggests a couple of other models of corporate behavior and offers some examples of hypothetical corporations that operate much differently than the structural restraint view would suggest. Thus, the structural restraint view of corporate behavior is found to be an inadequate model on which to base a theory of corporate moral status.

In fact, he seems to imply that no model would be able to fit all corporations at all times. Any model that claims to cover all corporations would be guilty of the same oversimplifications concerning corporate structure and behavior as the structural restraint model. Different corporations have different kinds of decision making structures and cannot all be adequately described by a single model of corporate behavior.

So, suggests Donaldson, we have been asking the wrong questions:

"Instead of simply asking whether all corporations are moral agents, or all corporations are not (thus assuming that all corporations are one way or the other), it would have been better to ask whether some corporations are moral agents and some are not.⁶⁹

The proper or more fruitful procedure, Donaldson posits, would be to specify the conditions for moral agency and then judge each corporation, one by one.

So far, I am inclined to agree with Donaldson, although it should be noted that the claim that no organizational model can adequately cover all corporate behavior is itself open to empirical verification. The fact that neither Donaldson nor I know of a model that does the job certainly does not prove one doesn't or couldn't exist.

However, even if such a comprehensive model did exist, Donaldson's proposal would still be an acceptable means by which to judge corporate moral status. In a sense, it would be necessary to examine individual corporations to see if they did in fact fit into any given model's description of corporate behavior. So

⁶⁹Thomas Donaldson, Corporations and Morality, p. 29.

perhaps it would be just as efficient to hold each corporation up to the standards of moral agency one by one as it would be to try to discern moral status by models of organizational behavior.

But Donaldson's proposal is not so straightforward as it would seem. Corporate moral agency, he claims, "...is of a special kind."⁷⁰ It has its own special criteria. In order to qualify as a moral agent, a corporation must, at minimum, possess:

1. the capacity to use moral norms in decision making;
2. the capacity of the decision making process to control not only overt corporate acts, but also the structure of policies and rules.

If these criteria were simply a restatement of the same requirements held for all agents in terms more applicable to corporations, I might go along. But they are not. What they are, in effect is a watering down of the criteria for full-fledged agency.

Donaldson claims this special status is necessary because corporations (especially large ones) are not like human beings mostly because of the bureaucracy inherent in large organizations. For instance, it is much more difficult for a corporation to execute its decisions to act in such-and-such a way than it is for a human being.

⁷⁰ Ibid., 30.

Based on the nature of large organizations, this "bureaucratic model" holds

"that the crucial features of bureaucratization (i.e., rules, strata isolation, centralization, professionalism, and complexity) create problems for corporate responsibility, and these problems are clearly different from those of individuals. This in turn, suggests that for large corporations we must be satisfied with a different and more complex model of responsibility than for individuals."⁷¹

This does not seem to me to be the only possible conclusion. In fact, I think there is a more obvious one and that is that large bureaucratic corporations simply do not qualify as moral agents.

I fail to see the value in establishing a lower class of moral agency for corporations. The motivation seems to be the justification of holding corporations responsible for their acts. But there are other alternatives. As we shall see when we examine the views of Michael Keeley, just because corporations are not moral agents does not mean they are shielded from moral judgments on their actions.

⁷¹Ibid., 124.

THE VICARIOUS VIEW

One of the most intriguing but least discussed models of corporate behavior and moral agency is put forward by Larry May. May contends that none of the views we have considered so far are appropriate to describe the behavior of corporations and as such do little to settle the question of corporate moral status.

Contrary to what French says, corporations in May's view are not capable of the sort of individual, independent, intentional action that is a necessary condition for moral agency. Neither are they the amoral decision making machines that Ladd claims they are -- formal organizations whose employees' actions for the corporation are clearly and absolutely distinct from their acts as individuals.

Rather, suggests May, corporations have a rather unique relationship with their employees that allows them to act through the employees in a way that can best be described as the corporation acting, a relationship analogous to the relationship between an elected political representative and his/her constituents.

In May's own words, "...corporations have the peculiar property of only being able to act vicariously.

In virtue of this fact the fiction that corporations are full-fledged moral agents should not be sustained. Instead corporations should be given a distinct moral or legal status of their own..."⁷²

Rita C. Manning also suggests a version of a vicarious sort of agency based on the analogy of the way in which "lawyers act for their clients when they are given the power of attorney."⁷³ An analogy which she unfortunately does not elaborate on. Although the idea is not exclusively that of May, I will concentrate on his position as the most fully articulated example of the view.

In order to understand the nature of the relationship May describes between a corporation and its employees, and the type of unique moral status this suggests, it will be helpful first to look at how May says it is different from some of the views we've examined.

As we have already seen, May flatly rejects the notion of corporations as full-fledged moral persons. This is based on his rejection of French's account of corporate intentions.

⁷²May, "Vicarious Agency," p.69.

⁷³Rita C. Manning, "Corporate Responsibility and Corporate Personhood," Journal of Business Ethics, III (1984), 79.

In the corporate decision-making process, individual wills are not somehow subsumed into a greater corporate will. Actually, what happens is no different than in any other group making a decision. In the process of reaching a consensus, the individuals (at least some of them) alter their original intentions or ideas. They compromise in order to come up with a decision acceptable to all.

French's account of corporate decision-making says May, does not show that the decision-making should be attributed to the corporation due to the subordination and synthesis of wills instead of merely describing it as "individual acts of varying and altering intentions in order to achieve consensus and compromise between and among members."⁷⁴

This is not to say, however, that some actions of individuals within the corporation are not better described as acts of the corporation, only, that these corporate acts are not evidence of a corporate will.

May also takes issue with Ladd's description of corporate behavior as unrealistic and far too narrow. Ladd suggests that there is a hard and fast distinction between acts performed by corporate employees for the corporation and those performed by employees for

⁷⁴May, "Vicarious Agency," p. 72.

themselves. Any act not in some sense related to the attainment of a corporate goal is automatically an act of the individual involved. "Yet," May writes:

as I will next show, this is not true of corporate behavior. Some actions performed by individuals can be better described (or re-described) as actions of the corporation even though the actions take place outside of the proper profit-making goals of those organizations.⁷⁵

It is impossible to give an adequate description of such an event, claims May, without reference to the "causal role of the corporation."⁷⁶ Members of the corporation are facilitated in their actions by the power granted to them by the corporation. This is not to say that every action of a member of a corporation is automatically attributable to the corporation. Rather, it is to point out that the boundary between individual and corporate behavior is not so clearly drawn as Ladd would claim. It is not the relation to corporate goals that defines when an act of corporate members is to be taken as an act of the corporation but rather the nature of the relationship itself.

Taking his lead from Anthony Quinton, May describes the relationship between a corporation and its members as analogous to the relation between a forest and its trees.

⁷⁵Ibid., 59.

⁷⁶Ibid., 73.

When it is said that Gulf Oil Co. acts it is also true that at least one of the members of that corporate entity acts. But, more often than not, the acts must be described with reference to the corporation, since the acts here are different from the acts of the individual members, just as a whole is different from its parts.⁷⁷

What makes possible such corporate action and what distinguishes it from cooperative action is the vicarious relationship set up between a corporation and its members through the corporate structure.

The establishment or "incorporation" of the corporation is the process whereby persons (the incorporators) delegate one entity, the corporation as their representative.

May suggests that this is similar to the establishment of the office of congressional representative through whose agency the constituents can act. The difference, says May, is that the stockholders can't actually act through the corporation without the corporation itself acting through others, namely, its employees, managers, and others.

In other words, in setting up the formal structure of a corporation individuals establish a single entity to act for them collectively. In this act of incorporation the board of directors is delegated "as those individuals whose collective decisions will be called the

⁷⁷May, "Vicarious Agency," p. 79.

corporation's decisions."⁷⁸ The corporation, in turn, can only carry out the decisions of the board through its appointed agents: managers, supervisors and employees. "The corporation is thus a place-holder, standing in for the stockholders who are the ones, collectively, who act through the supervisors and employees."⁷⁹

What distinguishes corporate actions from individual ones is not whether the action in some sense coincides with corporate goals, (as against Ladd and French) but whether the individual who initiated the action had been granted power from the corporation and had not in some sense been prohibited by the corporation from using that power in such a manner.

May has called this relationship a "causal nexus," meaning a constellation of relationships exists whereby an employee has been empowered to act as the corporation's (and ultimately the stockholders's) agent. It is only when such a causal nexus exists, says May, that an action can properly be called the action of a corporation.

If the board members, for instance, have collectively decided to create a job with a certain description, then anyone hired for that job who acts in conformity with the job description, and whose actions are not countermanded by a higher employee, acts for the corporate board and hence, in some sense, for the corporation. If the employee acts outside his or her

⁷⁸ Ibid.

⁷⁹ May, "Vicarious Agency," p. 75.

job description or in a way opposed to specific orders from higher employees, his or her actions are not the actions of the corporation, since the causal nexus has been broken. In this case, the employee is solely responsible for the consequences of his or her action.⁸⁰

In this sense and this sense only can corporations be said to act.

But this is not the sort of action that is required for moral agency. It is not intentional action even of the simplest kind. The corporation acts vicariously, but does not intend vicariously. The individuals acting as agents for the corporation have intentions, but then intentions, May implies, are irrelevant to whether or not the action counts as that of the corporation.

Therefore, corporations do not qualify as moral agents; and if they are not moral agents then we cannot hold them morally responsible for their actions. But, says May, there is another alternative. Recognizing the unique way in which corporations act, we can grant them an equally unique moral status.

I have already said I consider May's view one of the most intriguing of the views we have discussed. This is not to say, however, that his view lacks problems.

Like the moral person or structural restraint views, the vicarious agency view is simply one model of organizational behavior and as such is open to the same

⁸⁰ Ibid., 76.

sort of empirical inquiry as the others. But, equally important is the question of in what this unique moral status May proposes will consist. What rights and responsibilities does this unique sort of moral agency entail? How would the criteria for corporate moral agency differ from those for full-fledged agency?

Unfortunately, May does not give us many clues as to what he has in mind. Whatever he has in mind, it is very difficult to conceive of a notion of moral responsibility that does not in some way involve intentions. But May has determined corporations are in no sense capable of acting intentionally. Therefore if corporations are to be granted a moral status, it must be a status that does not require the capability of acting intentionally.

The extension of May's view is that we cannot properly attribute moral status of any sort to corporations. Corporations cannot be said to think, consider the effects of their actions on others or have empathy. In Goodpaster's terms, they cannot be said to be capable of taking the moral point of view. Under May's view, it seems we could not even properly say a corporation has decided.

Once qualified as a corporate action, it seems all we are left to base our judgements concerning moral responsibility on is the action itself. At most, it seems we can say corporation A committed act B (say, donated a large sum of money to the local United Way drive). We

can say nothing of the reasons for its actions. So, if according to our moral standards act B is a morally responsible thing to do, corporation A is deserving of our praise (even if the director of corporate giving donated the money for an immoral reason), which seems to go against the grain of most moral theory. In order to receive moral praise, an action must have been taken for the "right" reasons (or at least, not for the "wrong" ones). Conversely, whatever the motivation of the individuals involved, if a corporate act is found to be morally irresponsible, then the corporation is deserving of blame. But this sounds more like strict legal liability than moral responsibility.

It is evident that whatever the look of this unique moral status to be afforded corporations, it will be much different from ordinary moral agency in some very crucial ways. Perhaps so different that it makes little sense to think of it in terms of the categories of agency (responsibility, praise, blame, etc.) at all. According to May's description, corporations are more properly classified causes than agents.

If by setting aside a unique moral status for corporations, May is trying to prevent a situation in which corporations would escape moral judgement there are other alternatives. Michael Keeley suggests one provocative option, as we shall see when we look at his critique of goal-oriented views in the next section.

A CRITIQUE OF GOAL-ORIENTED MODELS
(WITH NOTES FOR A NEW DIRECTION)

We have so far examined a range of positions on the moral status of corporations. They have been classified according to the model of organizational behavior on which they were based. Now we will look at several of the theories in a different light.

Organizational theorist Michael Keeley has pointed out that a great deal of organizational theory is based on what he calls an organismic or goal-oriented model. The organismic model is, as the name implies, based on a supposed analogy between living organisms (typically human beings) and organizations. A central notion common to organismic models is the claim that organizations have aims and interests of their own. "Organismic views," writes Keeley:

suppose that social collectives, like biological entities, have a welfare over and above the welfares of participating individuals. Welfare, in this context, implies a 'personal' preference for some states of affairs over others. [Such properties include] ...interests, needs, purposes, goals, and the like...⁸¹

⁸¹Michael Keeley, "Organizational Analogy: A Comparison of Organismic and Social Contract Models," Administrative Science Quarterly, XXV (June, 1980), 342.

This one common theme, claims Keeley, is also the one fatal flaw of all organismic models.

It is my position that all of the views we have examined (save the reductionist view, which has been shown to fail on other grounds) fail as descriptive models of corporate behavior and hence as theories of moral status. And this is so if for no other reason than because of one central and shared supposition, that corporations have goals, intentions or purposes.

While I will probably receive little argument about the appropriateness of placing the moral person theories in the category of goal-directed models, it may not be so obvious that the structural restraint or conditional theories also belong in this category.

The structural restraint view probably seems the least likely candidate for inclusion among organismic views. After all, Ladd and Werhane refer to corporations as analogous to machines.

But if we probe a little further, the centrality of the notion of goal orientation in their views begins to reveal itself. Formal organizations are defined by Ladd as decision-making structures that are limited in the factors that can be involved in their decisions by the fact that they are structured solely for the achievement of a set of predefined goals.

It is hard to imagine a position more dependent on the goal-orientation of organizations to its central thesis. In this view, corporations are like single-minded persons who are so focused on a particular goal that they are extremely difficult to distract and often are oblivious to outside interest.

As Michael Keeley has noted, it is just this kind of goal-oriented behavior that provides the foundation upon which to build a theory of corporations as moral agents.⁸²

There is a sense in which any intelligible use of the words "goals", "purposes", and "intentions" draws its meaning from the behavior of organisms. It is in the context of organismic activity that we come to know what these words mean. Any application of them to a non-organismic subject seems to rely on an implicit analogy with organismic behavior for its meaning. So, even if Ladd and Werhane prefer to think of corporations as decision-making, or goal-oriented machines, there is a sense in which they appeal to an organismic analog.

Furthermore, Keeley points out that:

from a historical standpoint both 'mechanistic' and 'organic' models of organization...are organismic variants. Mechanistic organizations are typically portrayed as hierarchically controlled systems of quite specific tasks, not unlike Plato's ideal state, while organic organizations are seen to entail less

⁸²Keeley, "Organizations as Non-Persons," p. 149.

precisely defined roles and more diffuse authority relations. Still both models still share the same essential organismic feature: as Burns and Stahler observe, the aim of each type of organization is 'to exploit the human resources of a concern in the most efficient manner feasible in the circumstances.' In sum it is a general focus on organizational goals and well being that distinguishes the organismic analogy.⁸³

As for the conditional view, Donaldson suggests that no one model of corporate behavior will cover all corporations. Yet he goes on to propose a bureaucratic model of corporate responsibility according to which larger corporations qualify as special moral agents. While it is a model that acknowledges the difference between persons and larger organizations, it also relies on an analogy between the two.

At any rate, Donaldson's criteria for corporate moral agency entails the capability of some sort of purposeful behavior. And since he claims that most, if not all corporations could meet his criteria, he apparently also believes corporations are capable of goal-oriented behavior.

The challenge Keeley makes to organismic model theorists is straightforward. Theorists who use organismic models are making an empirical claim that organizations have goals, intentions or purposes of their own. Keeley suggests we try to find one.

⁸³Keeley, "Organizational Analogy," p. 343,344.

As a framework for analysis, he proposes three distinct concepts: goals for an organization, goals of an organization, and consequences of an organization. In these instances, "of" connotes ownership in the sense of being a property of.

Goals for an organization are the results or outcomes people want from organizational activity. Goals of an organization are the outcomes the organization itself wants. And consequences of an organization are the actual results or outcomes of joint behavior.

If we want to identify goals for an organization we can talk to those people involved with the organization. Consequences of an organization are also fairly easily identified by monitoring the actions of the organization. "But," says Keeley, "it is not apparent that the second, goals of an organization which are supposed in the social person [and in all organismic models] - can be identified by any means."⁸⁴

However, moral person and structural restraint theorists suggest that corporations reveal their goals in many ways.

One of the most frequently cited examples of corporate goals and purposes is an organization's official documents and public statements by company

⁸⁴Keeley, "Organizations as Non-Persons," p. 150.

representatives: such things as charters, annual reports and speeches by executive officers.

However, Keeley notes, actual examination of corporate behavior has shown such official goals to be, at best, misleading, and at worst deceptive. Generally, they are put forth as public relations tools conceived to get public approval. They often prove too broad to be a guide to corporate behavior or function as decision making premises and too vague to be helpful in the understanding of a particular organization's behavior.

Organizational theorist Charles Perrow explains:

A business corporation, for example, may state that its goal is to make a profit or adequate return on investment, or provide a customer service, or produce goods.

This level of analysis is inadequate in itself for full understanding of organizational behavior. Official goals are purposely vague and general and do not indicate two major factors which influence organizational behavior: the host of decisions that must be made among alternative ways of achieving official goals and the priority of multiple goals, and the many unofficial goals pursued by groups within the organization.

It is these factors that influence the nature of the organization, and distinguish it from another with an identical goal.⁸⁵

In addition, whatever their analytical value, Keeley suggests that such official statements actually reflect goals for a corporation. In the end, "[m]ore evidence is required that a stated goal is really a goal of the

⁸⁵Perrow, "The Analysis of Goals in Complex Organization," p. 55,56.

organization than the fact that some participants say so."⁸⁶

Since most organizational theorists have rejected official documents as the key to unlocking corporate goals, they commonly appeal "to...actual organizational activities and infer from these what 'real' or 'operative' goals they support."⁸⁷

For example, Perrow writes, "Operative goals designate the ends sought through the actual operating policies of the organization; they tell us what the organization actually is trying to do, regardless of what the official goals say they are."⁸⁸

This is similar to Ladd, Werhane and French's appeal to organizational procedures which are considered analogous to rules of a game and from which organizational intentions can be derived.⁸⁹

But, there are problems with operative goals as well. They are difficult to discern and often conflicting.

The sort of organizational rules or procedures identified by the theorists we have discussed may be of

⁸⁶Keeley, "Organizations as Non-Persons," p. 150, 151.

⁸⁷Ibid., 151.

⁸⁸Perrow, "The Analysis of Goals in Complex Organization," p. 860.

⁸⁹Keeley, "Organizations as Non-Persons," p. 151.

help in identifying what counts as organizational vs. non-organizational behavior. However even after we identify valid corporate behaviors, we are still left with the problem of how to sort out conflicting goals for the purpose of deriving organizational intentions.

For example, examination of a particular company may show that the company (through the engineering department) has a commitment to building high-quality products using only the finest material available for their construction. At the same time, we may also find that the company (through the purchasing department) has a policy of cutting corners and settling for second best in order to save money. How are we to decide which operational goal truly reflects the desire of the company?

Furthermore it is not at all clear that even if we identify organizational behavior that it is possible to "establish the organizational intent of that behavior, or that [the organization] has any real organizational intent at all."⁹⁰

Additionally, French makes the wildly optimistic claim (as is common with organismic theories) that in corporations, individual wills and purposes are melded into a single and unified corporate will and purpose. As proof for this claim, French relies heavily on the dictum that the whole is more than the sum of parts, or in this

⁹⁰ Ibid., 153.

case, that organizations are more than the aggregate of the people who make them up. According to French, this "more" entails an overriding corporate will or intent.

So we find ourselves back to the question of whether organizational behavior entails organizational intent. Even if we grant that corporations can "act," this doesn't seem obvious.

As Keeley writes, "It seems fairly clear that organizations have some collective properties of their own. It is not clear, however, that intentionality is among them."⁹¹

As he points out, organizations produce many consequences that can be properly labeled properties of the organization in the sense that they are "more than the aggregate effects of individual behavior,"⁹² and these in turn might be called "acts" of the organization.

From the fact that an organization so acts, in the sense of producing an effect, it is a large leap to the claim that it can act, in the sense of intending an effect. To establish the latter, one must be able to distinguish consequences intended by an organization - goals of the organization - from other consequences.⁹³

Such consequences of corporate behavior or corporate acts might include profits, deficits, service, salaries, growth, pollutants, job-induced injuries, racial discrimination, etc.

⁹¹Ibid., 152. ⁹²Ibid., 153. ⁹³Ibid.

Organismic theorists want to call only some of these organizational goals, but on what grounds?

Both formal and operational goals ultimately are reducible to some individual's goals for the corporation. As Keeley demonstrates, organizational theorists only count those consequences which are goals for some individuals involved in the organization as operational goals such as profit or growth, but not pollutants. "So," writes Keeley:

neither French nor Ladd nor any organizational theorist, to my knowledge, has offered a criterion for distinguishing organizational goals from a larger set of organizational consequences that is independent of participant satisfaction. In short consequences of and goals for an organization are generally identifiable, while independent goals of an organization are not.⁹⁴

What does this mean for corporate moral status? If corporations are not capable of acting intentionally, then they do not qualify as moral agents and have none of the attendant responsibilities or rights.

As we have already seen, rather than grant that corporations are not moral agents some philosophers have proposed that we not disqualify corporations from moral agency altogether, but rather establish a new moral status, one not involving intentionality.

⁹⁴Ibid., 154.

But, for reasons we have already discussed, this seems a misguided reaction. Because of their size and the amount of financial resources they control, corporations have a tremendous impact on our lives. They affect the economy, our environment, legislation, literally every aspect of our lives. It is in our interest to monitor and to try to affect their actions. Nonetheless, we may actually cause more harm than good by holding on to a conceptual model that has been shown to have a very serious disanalogy.

There are other alternatives. Simply because corporations do not qualify as moral agents does not mean we cannot make moral judgments about them.

Along this line, Patricia Werhane makes a useful distinction between moral accountability and social responsibility. We may not be justified in holding corporations morally accountable for their outcomes. But we can apply pressures on them to get them to act in ways we find morally preferable to others. Corporations that respond in the ways we want are, in Werhane's terms, socially responsible.

Of course this approach has its own problems. Prominent among them is how corporations are to sort to out to which of the many and potentially conflicting demands to respond. There is also the matter of how to reconcile regulation of corporations with a so-called

free market economy. But these are certainly not unsolvable problems.

There is no arguing that the activities of large, complex organizations like corporations and their relation to the rest of human society are suitable objects of philosophical inquiry. What I am suggesting is that we put the issue of corporate moral status to rest and turn our energies to more fruitful models of corporate behavior as tools of inquiry.

Keeley has suggested that perhaps the organismic model's chief historical competitor, the social-contract model, would be a more flexible tool that would yield a greater understanding of organizational structure and behavior, as well as the relation of corporations to morality, individuals and the societies in which they exist.⁹⁵ Having concluded that corporations do not qualify as moral agents, Keeley writes:

It is still logical, for instance, to argue that, as social systems if not persons, organization X is preferable to organization Y on moral grounds. Reconsider the game analogy. While it is odd to ask whether a game itself is behaving responsibly, it is reasonable to ask whether it is fair, right, or the like. Possibly one could say that a potentially violent game such as hockey, to the extent that it entails penalties for such acts as tripping, slashing and fighting, is morally preferable to a similar game which entails no penalties, but allows participants

⁹⁵See Keeley, "A Social Justice Approach to Organizational Evaluation" Administrative Science Quarterly, XXII (June, 1978), 272-292; and Keeley, "Organizations As Non-Persons" p. 149-155.

to inflict unlimited injury on one another to further their own cause. So again in the case of organizations, those which minimize injurious consequences to participants might be preferable on moral grounds. And various sorts of, say governmental, policies may be morally justified in promoting the minimization of aversive organizational consequences. The image of organization implied here is along lines of a Lockean 'trust'...⁹⁶

The image of corporations according to this social-contract model would be very different than that portrayed by the organismic model. Just what its implications for the relation of morality to corporations has yet to be fully explored.⁹⁷

⁹⁶ Keeley, "Organizations as Non-Persons," p. 155.

⁹⁷ Keeley has begun this task in his articles "Organizational Analogy: A Comparison of Organismic and Social Contract Models" and "A Social Justice Approach to Organizational Evaluation."

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